

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES EDWARD HOBBS,

Petitioner,

v.

RONALD RACKLEY,

Respondent.

No. C 16-1118 RMW (PR)

ORDER OF DISMISSAL

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the reasons stated below, the instant petition is **DISMISSED** without prejudice as a second or successive petition pursuant to 28 U.S.C. § 2244(b).

DISCUSSION

A district court must dismiss claims presented in a second or successive habeas petition challenging the same conviction and sentence unless the claims presented in the previous petition were denied for failure to exhaust. See 28 U.S.C. § 2244(b)(1); Babbitt v. Woodford, 177 F.3d 744, 745-46 (9th Cir. 1999). Additionally, a district court must dismiss any new claims raised in a successive petition unless the petitioner received an order from the court of appeals authorizing the district court to consider the petition.

Here, the instant petition is not petitioner's first federal habeas petition concerning his 2003 criminal judgment from the Santa Clara County Superior Court. In the underlying petition,

petitioner raises six allegations of error regarding his 2003 criminal conviction and sentence.

Petitioner has previously filed a federal habeas petitions, challenging this same criminal judgment from the Santa Clara County Superior Court. See Hobbs v. Felker, No. C. 06-4871 RMW (N.D. Cal. denied June 3, 2009). This court previously denied the petition on its merits. Id. Because the underlying petition challenges the same 2003 conviction and sentence, and petitioner has not presented an order from the Ninth Circuit Court of Appeals authorizing this court to consider any new claims, this court must dismiss the instant petition in its entirety. See 28 U.S.C. § 2244(b)(3)(A).

CONCLUSION

The instant habeas petition is DISMISSED without prejudice to refiling if petitioner obtains the necessary order. The clerk shall terminate any pending motions and close the file.

Petitioner has not shown “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right [or] that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, a certificate of appealability is DENIED.

IT IS SO ORDERED.

Dated: 6/16/2016



RONALD M. WHYTE
United States District Judge